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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,197	06/20/2005	Bruce Jankowski	2884 (203-3592)PCTUS)	8066
50855	7590	09/11/2008		
Tyco Healthcare Group LP 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473			EXAMINER WEEKS, GLORIA R	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 09/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/540,197

**Applicant(s)**

JANKOWSKI ET AL.

**Examiner**

GLORIA R. WEEKS

**Art Unit**

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-12 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6, 7, 19, 20 and 26 is/are rejected.
- 7) ☒ Claim(s) 8-12, 21-25, 27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the amendment and election received on June 23, 2008.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6, 19, 20 and 26 are rejected under 35 U.S.C. 102(b) as being unpatentable over Sauer et al. (USPN 5,839,639).

In reference to claims 6, 19, 20 and 26, Sauer et al. discloses a surgical stapling apparatus and vacuum system comprising: a shell assembly 18 positioned on a distal end and proximal end of a body portion 26; a movable anvil 20; an array of staples 23; an aperture 62; an annular knife (column 7 lines 43-46); a hollow vacuum housing sleeve 12 positioned about a proximal end of the shell assembly 18 to define a vacuum chamber and the distal end of the body 26, wherein the at least one aperture 60 is positioned within the vacuum chamber (figure 2); a vacuum conduit 58 communicating with the vacuum chamber; and at least one vacuum tube 60, 70 having a first end 60 positioned within the vacuum chamber and a second end 70 positioned within an inner chamber of the shell assembly 18.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

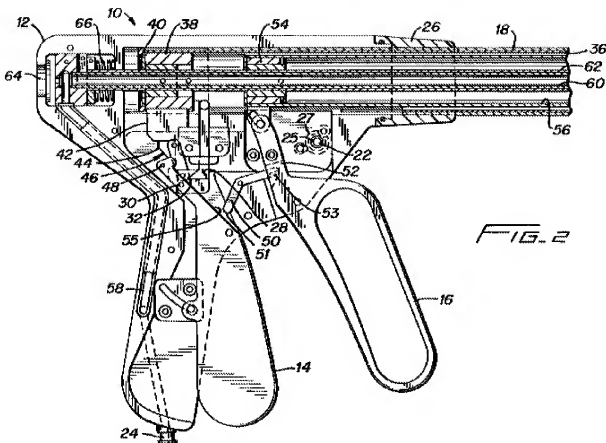
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer et al. (USPN 5,839,639).

Regarding claim 7, Sauer et al. discloses a single vacuum tube 60, but does not disclose any additional vacuum tubes. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system of Sauer et al. to include a second vacuum tube, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. Furthermore, Applicant's specification does not disclose how an additional vacuum tube solves a particular problem other than the inherent advantage provided by duplicating essential working parts of a device.

#### ***Response to Arguments***

6. Applicant's arguments filed June 23, 2008 have been fully considered but they are not persuasive.
7. Applicant has argued that Sauer fails to disclose a vacuum device including a housing that is positioned about at least a portion of a shell assembly of the surgical stapling apparatus, the housing defining a vacuum chamber as recited in claim 6. As shown in figure 2 of Sauer, housing 12 supports shell assembly 18 with the assistance of collar 26, such that housing 12 surrounds a portion of the shell assembly 18. The housing is found to meet the limitations of a vacuum chamber since claim 6 defines a vacuum chamber as a housing structure in communication with a vacuum conduit 58 and at least one vacuum tube 60.



Although Sauer has used different terminology to define the above disclosed elements, the structural limitations have been met by Sauer as claimed by Applicant.

*Allowable Subject Matter*

8. Claims 8-12 and 21-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Upon examination, the art considered as a whole, alone or in combination, neither anticipated nor renders obvious the claimed surgical stapling system comprising vacuum tubes secured to a

manifold slidably positioned within a vacuum chamber, wherein the vacuum chamber is defined by a vacuum housing positioned about a shell assembly of a surgical stapling apparatus. Such a configuration permits vacuum tubes to be moved with respect to a stapling system to a position away from the shell assembly for the purpose of grasping tissue outside the parameters of the shell assembly, to a position within the shell assembly such that the grasped tissues is pulled within a spacing defined by the shell assembly and an anvil of the surgical stapling apparatus.

While the prior art has been found to disclose surgical stapling systems with multiple vacuum tubes, none have been found to disclose or suggest the manifold arrangement of Applicant's claimed invention.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

*/Gloria R. Weeks/  
Examiner, Art Unit 3721  
/Rinaldi I Rada/  
Supervisory Patent Examiner, Art Unit  
3721*